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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE V. GOPALA GOWDA

WRIT PETITION No.1327/1992

BETWEEN:

G.Nagesh,
Age: Major, Occ:
First Division Assistant,
Sanjay Gandhi Institute
of Accidents and Rehabili-
tation Centre,
Bangalore.

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..PETITIONER

(By Sri Ravi.B. Naik, Advocate)

AND:

1. The Director,
Sanjay Gandhi Institute
of Accidents and Physical
Medicine Institute,
4th Block, Jayanagar,
Bangalore.
2. The Chairman,
Finance Committee,
Sanjay Gandhi Institute
of Accidents Rehabilitation
and Physical Medicine
Institute, 4th Block,
Jayanagar, Bangalore.
3. State of Karnataka,
represented by its
Secretary, Health and
Family Welfare Department,
Vidhana Soudha,
Bangalore.

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4. Sri. Manohar,
Age: Major, Occ: Steno-
grapher, Sanjay Gandhi
Institute of Accidents
Rehabilitation and Physical
Medicine Institute,
4th 'T' Block, Jayanagar,
Bangalore.

5. Smt. Laxmibai,
Age: Major, Occ: Typist,
Sanjay Gandhi Institute of
Accidents Rehabilitation
and Physical Medicine
Institute, 4th 'T' Block,
Jayanagar, Bangalore.

..RESPONDENTS

(Bharathi Nagesh, AGA for R-3)

This Writ Petition is filed under Article 226 of the Constitution of India praying to quash Annexure-A dt. 21.12.91 passed by the Finance Committee, the 1st and 2nd respondents in so far as it relates to Item Nos.07 and 09 of promoting R-5 from the post of typist to 2nd Division Assistant and promoting R-4 from the post of Stenographer as Senior Assistant etc.,

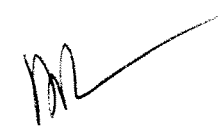
This writ Petition is coming on for hearing this day, the Court made the following:-

O R D E R

The petitioner is working as First Division Assistant in the Sanjay Gandhi Institute of Accidents Rehabilitation and Physical Medicine Institute. There are no posts of Senior Assistants provided under the Cadre and Recruitment Rules framed by the Institute. Further,

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Typists cannot be promoted as Second Division Assistants. The 4th respondent is working as Stenographer in the first respondent Institute. Respondents 1 and 2 with a view to favour them have passed impugned Resolution at Annexure-A changing the cadre of typists to the Second Division Assistants even-though the said posts are not provided under the Recruitment Rules. Neither respondents 1 and 2 nor the Finance Committee of the said Institute are empowered under the Cadre and Recruitment Rules to change the Cadre of Typist to the post of Second Division Assistant. There is no post called Personal Assistant in the first respondent Institute. The Finance Committee of the first respondent Institute vide impugned resolution has considered the proposal for expanding personal section of the Director by creating one Senior Assistant post to the Director in the scale of Rs.1,600-2,990 and fill up the said post by promoting Sri.Manohar Mohite the 4th respondent herein who was working as Stenographer and approved the post of Personal Assistant subject to the ratification by governing Council of the Institute. Whether this part of the resolution is ratified by Governing Council or not, no material is



placed before this Court in this writ petition.

2. The learned counsel Mr. Naik submitted that the change of Cadre from Typist to Second Division Assistant and to consider the case of the 5th respondent to the said post with effect from 1.1.1992 by filling up the said post out of qualified Class-D officials of this Institute has been done. In the impugned order, instead of selecting from among the qualified Class-D employees of the Institute. The 5th respondent has been considered and filled up to the said post. Therefore, the action of the respondents 1 and 2 and the Finance Committee and the first respondent is bad in law. The further case of the petitioner is that as per Cadre and Recruitment Rules framed by the Institute, it is not permissible to promote a Typist to Second Division Assistant and Stenographer as Second Division Assistant such being the case changing the cadre of the typist to the cadre of Senior Assistant and filling up that post by appointing 5th respondent is contrary to the Cadre and Recruitment Rules and without authority of law. The further action of the Finance Committee in accepting the proposal of the Director of the

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first respondent and expanding his personal section by creating the post of one Senior Assistant in the scale referred to above and filling up the said post by appointing the 4th respondent is also not sustainable in law.

3. The respondents in this case have been duly served but they remained absent. Petition averments have not been controverted that the action of the Finance Committee of the first respondent passing resolution particularly at Item No.7 and 9 at Annexure-A are in accordance with the Cadre & Recruitment Rules. Hence, I pass the following order:

This Writ Petition is allowed. The impugned order Annexure-A is quashed only so far as the Resolution passed on Item No.7 and 9. No costs.

Sd/-
JUDGE

